

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

09/18/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

M. Cearfoss
Deputy

LC 2001-000232

FILED: _____

STATE OF ARIZONA

F TYLER RICH

v.

KATHLEEN M NORTON

JEFFREY D ROSS

PHX MUNICIPAL CT
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. 5904467

Charge: 1. DUI ALCOHOL
2. BAC OVER .10
3. FAIL TO YIELD FROM PRIVATE DRIVE

DOB: 03-30-1951

DOC: 04-12-2000

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement since the time of oral argument on August 22, 2001, and the Court has considered the arguments of counsel, the record of the proceedings from the Phoenix City Court, and the memoranda submitted.

The only issue presented for review to this Court is whether the trial judge erred in denying Appellant's Motion to Suppress the results of the blood-alcohol test administered to Appellant. A hearing was held on Appellant's Motion to Suppress on April 12, 2001, before the Honorable Ken Skiff, Phoenix City Court judge. At that hearing Officer Chris Packard, a Phoenix police officer, testified that he was certified to administer breath tests using the Intoxilyzer Model 5000.¹ Normally, Intoxilyzer operators use a checklist to verify that all of the correct procedural steps have been followed to insure the accuracy of a breath test.² However, Officer Packard did not use any type of form and did not check off all of the steps required prior to a breath test.³ More importantly, Officer Packard testified that he did not have any independent recollection of whether he followed the steps in this particular case.⁴ The prosecutor asked Officer Packard if he followed all of the steps on the checklist. Officer Packard answered, "Yes."⁵ The Court asked, "Okay, and then how do you know that you followed this checklist? The steps on this checklist?"⁶ Officer Packard answered, "Okay, I've been certified on the Intoxilyzer for probably close to five years. And that's what I do each and every time."⁷ Essentially, the officer testified as to his routine and habit and lack of any memory of a faulty reading on the Intoxilyzer machine.

The standard of review which this Court must use in evaluating a trial court's denial of a motion to suppress in a

¹ Reporter's Transcript of April 12, 2001, at 2.

² Id. at 9.

³ Id.

⁴ Id. at 10.

⁵ Id. at 11.

⁶ Id.

⁷ Id.

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case such as this is a clear abuse of discretion.⁸ This Court must view the facts presented to the trial court in a light which is most favorable to upholding the trial judge's ruling, and resolve reasonable inferences against the Appellant.⁹ This Court must also defer to the trial judge's findings where there are conflicts within the evidence.¹⁰ The trial judge as a fact finder in a motion to suppress hearing occupies the most advantageous position of weighing the credibility, veracity, and reliability of witnesses.

In this case, the only evidence presented to the trial court concerning a necessary portion of the foundational requirements prerequisite to the admissibility of the breath test was Officer Packard's testimony of habit. The officer testified that that's what he does each and every time and this testimony was clearly admissible. This evidence of the officer's "habit" was the only testimony presented to the trial court at the hearing on the motion to suppress which would show that the operator followed a checklist as required by A.R.S. Section 28-1323(A). This Court's responsibility is not to second-guess the trial judge who observed Officer Packard during his testimony. The trial judge specifically found that Officer Packard was believable.¹¹ The trial judge stated, "But I believe that the officer's testimony that he's never failed to follow the checklist is sufficient."¹²

Therefore, this Court finds sufficient evidence within the record to show that the trial court's ruling denying Appellant's Motion to Suppress was not an abuse of discretion and that it was supported by the evidence.

IT IS THEREFORE ORDERED sustaining the judgments of guilt and sentences imposed by the trial court.

⁸ *State v. Sharp*, 193 Ariz. 414, 973 P.2d 1171 (1999).

⁹ *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989).

¹⁰ *State v. Plew*, 155 Ariz. 44, 745 P.2d 102 (1987).

¹¹ RT of April 12, 2001, at 26.

¹² *Id.* at 27.

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IT IS FURTHER ORDERED remanding this matter back to the
Phoenix City Court for all future proceedings.